

AMENDED IN ASSEMBLY MARCH 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 348

Introduced by Assembly Member Brown

February 17, 2015

An act to amend Section 1420 of the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 348, as amended, Brown. Long-term health care facilities.

(1) Existing law provides for the licensure and regulation by the State Department of Public Health of health care facilities, including long-term health care facilities, as defined. Existing law establishes procedures to be followed when the department receives a written or oral complaint about a long-term health care facility. A complaint is defined to mean any notice to the department, other than a report from the facility, of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute a violation.

~~This bill, on or before July 1, 2016, would require the department to set a performance benchmark for completing its investigations within a defined number of days after receiving the complaint, not to exceed 60 working days. The bill would require the department, if it extends an investigation beyond the number of days specified in the benchmark, to notify the complainant, in writing, of the basis for the extension. The bill would require, effective July 1, 2016, and upon request of the complainant, that the department provide specific findings concerning an alleged violation, and include a summary of the evidence upon which the determination is based. The bill would require the department to comply with those specified time periods established for investigations~~

and inspections of complaints from a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that may constitute an alleged violation of these requirements. The bill would require the department to analyze its compliance with the benchmark in its annual system and staffing analysis, to make that analysis available to the relevant fiscal and policy committees of the Legislature, and to post it on the department's Internet Web site.

(2) Existing law provides the complainant with 5 business days after receipt of the notice of the department's determination in which to request an informal conference.

This bill would, instead, provide the complainant with 15 days after receipt of the notice in which to request an informal conference.

This bill would require the department to complete its investigation of the complaint within 40 working days of its receipt, except that this period may be extended up to an additional 30 days if the department has diligently attempted, but has not been able to obtain, necessary evidence related to the investigation. The bill would require the department, if it extends an investigation beyond 40 working days, to notify the complainant, in writing, of the basis for the extension. The bill would require, effective July 1, 2016, that the department's written determination provide specific findings concerning each alleged violation, and include a summary of the evidence upon which the determination is based. The bill would require the department to comply with those specified time periods established for investigations and inspections of complaints from a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that may constitute an alleged violation of these requirements.

(2) Existing law provides the complainant with 5 business days after receipt of the notice of the department's determination in which to request an informal conference, as specified.

This bill would instead provide the complainant with 15 days after receipt of the notice in which to request an informal conference.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1420 of the Health and Safety Code is
2 amended to read:

1 1420. (a) (1) Upon receipt of a written or oral complaint, the
2 state department shall assign an inspector to make a preliminary
3 review of the complaint and shall notify the complainant within
4 two working days of the receipt of the complaint of the name of
5 the inspector. Unless the ~~state~~ department determines that the
6 complaint is willfully intended to harass a licensee or is without
7 any reasonable basis, it shall make an onsite inspection or
8 investigation within 10 working days of the receipt of the
9 complaint. In any case in which the complaint involves a threat of
10 imminent danger of death or serious bodily harm, the ~~state~~
11 department shall make an onsite inspection or investigation ~~within~~
12 *as soon as practicable, and in no case more than 24* hours of the
13 receipt of the complaint. In any event, the complainant shall be
14 promptly informed of the ~~state~~ department's proposed course of
15 action and of the opportunity to accompany the inspector on the
16 inspection or investigation of the facility. Upon the request of
17 either the complainant or the ~~state~~ department, the complainant or
18 his or her representative, or both, may be allowed to accompany
19 the inspector to the site of the alleged violations during his or her
20 tour of the facility, unless the inspector determines that the privacy
21 of any patient would be violated thereby.

22 (2) When conducting an onsite inspection or investigation
23 pursuant to this section, the ~~state~~ department shall collect and
24 evaluate all available evidence and may issue a citation based
25 upon, but not limited to, all of the following:

26 (A) Observed conditions.

27 (B) Statements of witnesses.

28 (C) Facility records.

29 (3) *The department shall complete its investigation within 40*
30 *working days from receipt of the complaint. The 40-working-day*
31 *period may be extended up to an additional 30 days if the*
32 *department has diligently attempted, but has not been able to*
33 *obtain, necessary evidence related to the investigation. The*
34 *department shall analyze its compliance with this requirement in*
35 *its annual system and staffing analysis prepared pursuant to*
36 *subparagraph (B) of paragraph (2) of subdivision (d) of Section*
37 *1266.*

38 (4) *If the department extends an investigation beyond 40 working*
39 *days, it shall notify the complainant, in writing, of the basis for*
40 *the extension, and shall include in the notice any outstanding*

1 *evidence and the sources from which the evidence has been sought,*
2 *and the anticipated completion date.*

3 ~~(3)~~

4 (5) Within 10 working days of the completion of the complaint
5 investigation, the ~~state~~ department shall notify the complainant
6 and ~~licensee~~ licensee, in ~~writing~~ writing, of the department's
7 determination as a result of the inspection or investigation.

8 (6) *Effective July 1, 2016, the department's written*
9 *determination shall provide specific findings concerning each*
10 *alleged violation, and shall include a summary of the evidence*
11 *upon which the determination is made. The written determination*
12 *shall not disclose the names of individual residents.*

13 (b) Upon being notified of the ~~state~~ department's determination
14 as a result of the inspection or investigation, a complainant who
15 is dissatisfied with the ~~state~~ department's determination, regarding
16 a matter which would pose a threat to the health, safety, security,
17 welfare, or rights of a resident, shall be notified by the ~~state~~
18 department of the right to an informal conference, as set forth in
19 this section. The complainant may, within ~~five business~~ 15 days
20 after receipt of the notice, notify the director in writing of his or
21 her request for an informal conference. The informal conference
22 shall be held with the designee of the director for the county in
23 which the long-term health care facility ~~which~~ *that* is the subject
24 of the complaint is located. The long-term health care facility may
25 participate as a party in this informal conference. The director's
26 designee shall notify the complainant and licensee of his or her
27 determination within 10 working days after the informal conference
28 and shall apprise the complainant and licensee in writing of the
29 appeal rights provided in subdivision (c).

30 (c) If the complainant is dissatisfied with the determination of
31 the director's designee in the county in which the facility is located,
32 the complainant may, within 15 days after receipt of this
33 determination, notify in writing the Deputy Director of the
34 Licensing and Certification Division of the ~~state~~ department, who
35 shall assign the request to a representative of the Complainant
36 Appeals Unit for review of the facts that led to both determinations.
37 As a part of the Complainant Appeals Unit's independent
38 investigation, and at the request of the complainant, the
39 representative shall interview the complainant in the district office
40 where the complaint was initially referred. Based upon this review,

1 the Deputy Director of the Licensing and Certification Division
2 of the ~~state~~ department shall make his or her own determination
3 and notify the complainant and the facility within 30 days.

4 (d) Any citation issued as a result of a conference or review
5 provided for in subdivision (b) or (c) shall be issued and served
6 upon the facility within three working days of the final
7 determination, unless the licensee agrees in writing to an extension
8 of this time. Service shall be effected either personally or by
9 registered or certified mail. A copy of the citation shall also be
10 sent to each complainant by registered or certified mail.

11 (e) A miniexit conference shall be held with the administrator
12 or his or her representative upon leaving the facility at the
13 completion of the investigation to inform him or her of the status
14 of the investigation. The department shall also state the items of
15 noncompliance and compliance found as a result of a complaint
16 and those items found to be in compliance, provided the disclosure
17 maintains the anonymity of the complainant. In any matter in which
18 there is a reasonable probability that the identity of the complainant
19 will not remain anonymous, the ~~state~~ department shall also notify
20 the facility that it is unlawful to discriminate or seek retaliation
21 against a resident, employee, or complainant.

22 (f) For purposes of this section, "complaint" means any oral or
23 written notice to the ~~state~~ department, other than a report from the
24 ~~facility~~ facility, of an alleged violation of applicable requirements
25 of state or federal law or any alleged facts that might constitute
26 ~~such a violation.~~ *violation of these requirements.*

27 (g) *The department shall apply the timeframes for investigation*
28 *or inspection established in this section to a report from the facility*
29 *of an alleged violation of applicable requirements of state or*
30 *federal law or any alleged facts that might constitute a violation*
31 *of those requirements.*

32 (h) *Nothing in this section shall be interpreted to diminish the*
33 *department's authority and obligation to investigate any alleged*
34 *violation of applicable requirements of state or federal law, or*
35 *any alleged facts that might constitute a violation of applicable*
36 *requirements of state or federal law, and to enforce applicable*
37 *requirements of law.*

38 ~~SECTION 1. Section 1420 of the Health and Safety Code is~~
39 ~~amended to read:~~

1 ~~1420. (a) (1) Upon receipt of a written or oral complaint, the~~
2 ~~department shall assign an inspector to make a preliminary review~~
3 ~~of the complaint and shall notify the complainant within two~~
4 ~~working days of the receipt of the complaint of the name of the~~
5 ~~inspector. Unless the department determines that the complaint is~~
6 ~~willfully intended to harass a licensee or is without any reasonable~~
7 ~~basis, it shall make an onsite inspection or investigation within 10~~
8 ~~working days of the receipt of the complaint. In any case in which~~
9 ~~the complaint involves a threat of imminent danger of death or~~
10 ~~serious bodily harm, the department shall make an onsite inspection~~
11 ~~or investigation as soon as practicable, and in no case more than~~
12 ~~24 hours of the receipt of the complaint. In any event, the~~
13 ~~complainant shall be promptly informed of the department's~~
14 ~~proposed course of action and of the opportunity to accompany~~
15 ~~the inspector on the inspection or investigation of the facility. Upon~~
16 ~~the request of either the complainant or the department, the~~
17 ~~complainant or his or her representative, or both, may be allowed~~
18 ~~to accompany the inspector to the site of the alleged violations~~
19 ~~during his or her tour of the facility, unless the inspector determines~~
20 ~~that the privacy of any patient would be violated thereby.~~

21 ~~(2) When conducting an onsite inspection or investigation~~
22 ~~pursuant to this section, the department shall collect and evaluate~~
23 ~~all available evidence and may issue a citation based upon, but not~~
24 ~~limited to, all of the following:~~

25 ~~(A) Observed conditions.~~

26 ~~(B) Statements of witnesses.~~

27 ~~(C) Facility records.~~

28 ~~(3) On or before July 1, 2016, the department shall set a~~
29 ~~performance benchmark for completing its investigation within a~~
30 ~~defined number of days after receiving the complaint. The~~
31 ~~performance benchmark may be less than, but shall not exceed,~~
32 ~~60 working days.~~

33 ~~(4) If the department extends an investigation beyond the~~
34 ~~number of days specified in the performance benchmark, it shall~~
35 ~~notify the complainant, in writing, of the basis for the extension,~~
36 ~~and shall include in the notice the status of the investigation and~~
37 ~~the anticipated completion date. The department shall, thereafter,~~
38 ~~complete the investigation as expeditiously as possible.~~

39 ~~(5) Within 10 working days of the completion of the complaint~~
40 ~~investigation, the department shall notify the complainant and~~

1 licensee, in writing, of the department's determination as a result
2 of the inspection or investigation.

3 (6) Effective July 1, 2016, upon request of the complainant, the
4 department shall provide specific findings concerning an alleged
5 violation, and shall include a summary of the evidence upon which
6 the determination is made. The written determination shall not
7 disclose the names of individual residents.

8 (b) Upon being notified of the department's determination as a
9 result of the inspection or investigation, a complainant who is
10 dissatisfied with the department's determination, regarding a matter
11 which would pose a threat to the health, safety, security, welfare,
12 or rights of a resident, shall be notified by the department of the
13 right to an informal conference, as set forth in this section. The
14 complainant may, within 15 days after receipt of the notice, notify
15 the director in writing of his or her request for an informal
16 conference. The informal conference shall be held with the
17 designee of the director for the county in which the long-term
18 health care facility that is the subject of the complaint is located.
19 The long-term health care facility may participate as a party in this
20 informal conference. The director's designee shall notify the
21 complainant and licensee of his or her determination within 10
22 working days after the informal conference and shall apprise the
23 complainant and licensee in writing of the appeal rights provided
24 in subdivision (c).

25 (c) If the complainant is dissatisfied with the determination of
26 the director's designee in the county in which the facility is located,
27 the complainant may, within 15 days after receipt of this
28 determination, notify in writing the Deputy Director of the
29 Licensing and Certification Division of the department, who shall
30 assign the request to a representative of the Complainant Appeals
31 Unit for review of the facts that led to both determinations. As a
32 part of the Complainant Appeals Unit's independent investigation,
33 and at the request of the complainant, the representative shall
34 interview the complainant in the district office where the complaint
35 was initially referred. Based upon this review, the Deputy Director
36 of the Licensing and Certification Division of the department shall
37 make his or her own determination and notify the complainant and
38 the facility within 30 days.

39 (d) Any citation issued as a result of a conference or review
40 provided for in subdivision (b) or (c) shall be issued and served

1 upon the facility within three working days of the final
2 determination, unless the licensee agrees in writing to an extension
3 of this time. Service shall be effected either personally or by
4 registered or certified mail. A copy of the citation shall also be
5 sent to each complainant by registered or certified mail.

6 (e) A miniexit conference shall be held with the administrator
7 or his or her representative upon leaving the facility at the
8 completion of the investigation to inform him or her of the status
9 of the investigation. The department shall also state the items of
10 noncompliance and compliance found as a result of a complaint
11 and those items found to be in compliance, provided the disclosure
12 maintains the anonymity of the complainant. In any matter in which
13 there is a reasonable probability that the identity of the complainant
14 will not remain anonymous, the department shall also notify the
15 facility that it is unlawful to discriminate or seek retaliation against
16 a resident, employee, or complainant.

17 (f) For purposes of this section, “complaint” means any oral or
18 written notice to the department, other than a report from the
19 facility, of an alleged violation of applicable requirements of state
20 or federal law or any alleged facts that might constitute a violation
21 of these requirements.

22 (g) The department shall apply the timeframes for investigation
23 or inspection established in this section to a report from the facility
24 of an alleged violation of applicable requirements of state or federal
25 law or any alleged facts that might constitute a violation of those
26 requirements.

27 (h) It is the intent of the Legislature in enacting the amendments
28 that added this subdivision that the department endeavor to
29 complete investigations of complaints within the benchmark
30 established pursuant to this section.

31 (i) The department shall analyze its compliance with the
32 benchmark developed pursuant to paragraph (3) of subdivision (a)
33 in its annual system and staffing analysis prepared pursuant to
34 paragraph (2) of subdivision (d) of Section 1266. The analysis
35 required pursuant to this subdivision shall be made available to
36 the relevant fiscal and policy committees of the Legislature and
37 shall be posted on the department’s Internet Web site. The analysis
38 shall provide data on the department’s performance and shall
39 include, at a minimum, a tabulation of all of the following:

40 (1) Open investigations.

- 1 ~~(2) Completed investigations.~~
- 2 ~~(3) Number and percentage of investigations that meet the~~
- 3 ~~benchmark.~~
- 4 ~~(4) Average length of time to complete an investigation.~~
- 5 ~~(j) Nothing in this section shall be interpreted to diminish the~~
- 6 ~~department's authority and obligation to investigate and enforce~~
- 7 ~~any alleged violation of applicable requirements of state or federal~~
- 8 ~~law, or any alleged facts that might constitute a violation of~~
- 9 ~~applicable requirements of state or federal law.~~